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IN THE

Supreme Court of the United States

October Term, 1949

No. 588

WAIALUA AGRICULTURAL COMPANY, LIMITED, a Corporation,
Petitioner

v.

CIRACO MANEJA, ET AL., *Respondents*

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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IN THE

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October Term, 1949

No. .....

WAIALUA AGRICULTURAL COMPANY, LIMITED, a Corporation, *Petitioner*

v.

CIRACO MANEJA, ET AL., *Respondents*

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Petitioner, Waialua Agricultural Company, Limited, a corporation, respectfully prays that a writ of certiorari issue to review the judgment entered in the above entitled cause by the United States Court of Appeals for the Ninth Circuit, reversing the judgment entered by the District Court of the United States for the District of Hawaii.

OPINIONS BELOW

The opinion of the District Court of the United States for the District of Hawaii (R. 410-437) is reported at 77 F. Supp. 480. The opinion of the United States Court of Appeals for the Ninth Circuit (R. 464-490) has not been officially reported.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on November 10, 1949 (R. 491). The jurisdiction of this Court is invoked under the provisions of §240(a) of the Judicial Code, as amended, 28 U. S. C. §1254(1).

QUESTIONS PRESENTED

1. Whether the named employee respondents, who are engaged (i) in growing, cultivating and harvesting sugar cane on petitioner's sugar plantation in Hawaii, (ii) in processing such sugar cane into raw sugar and molasses on the plantation where produced, and (iii) in various operations performed on such plantation incidental and functionally necessary and indispensable to such growing, cultivating, harvesting and processing, are excluded from the overtime provisions of the Fair Labor Standards Act, as amended, by virtue of

   a. the exemption from such overtime provisions provided by §13(a)(6) thereof for employees "employed in agriculture" as the term "agriculture" is defined in §3(f) of said Act; or

   b. §7(c) of said Act, assuming that any of said employees is not so exempt under §13(a)(6).

2. Whether said employee respondents are excluded from the overtime provisions of said Act by virtue of their not being "engaged in commerce or in the production of goods for commerce", as the terms "commerce" and "produced" are defined in §§3(b) and 3(j) of said Act, when they are repairing and maintaining dwelling houses and related living facilities located on petitioner's plantation, which are furnished petitioner's employees and others under a landlord-tenant relationship with petitioner.

3. Whether the judgment of the District Court (R. 440-445) declares the rights of the parties so as to give a mandate or command as to the employees of petitioner named as defendants in the action in the District Court.

4. Whether the findings of fact made by the District Court (R. 410-437) are sufficiently detailed and specific to support the judgment.

STATUTORY PROVISIONS INVOLVED

The Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, 29 U. S. C. §201 *et seq.*), hereinafter sometimes called the Act, applies with certain important exceptions to any employee who is "engaged in commerce or in the production of goods for commerce". §§6, 7.

Section 13(a)(6) exempts from both the wage and hour provisions of the Act "any employee employed in agriculture . . ."

Section 3(f) defines "agriculture" to include:

> ". . . farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."

Section 7(c) provides that—

> "In the case of an employer engaged . . . in the processing of . . . sugarcane . . . into sugar (but not refined sugar) or into sirup, the provisions of

subsection (a) [the overtime provisions of the Act] shall not apply to his employees in any place of employment where he is so engaged . . ."

Section 7(a) provides that no employer shall employ any of his employees who is engaged in commerce or in the production of goods for commerce for a workweek longer than 40 hours—

". . . unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed".

Section 3(b) defines "commerce" to mean:

". . . trade, commerce, transportation, transmission, or communication among the several States or *between* any State *and* any place outside thereof" [italics ours].[1]

Section 3(j) defines "produced" to mean:

". . . produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any *closely related process or occupation directly essential to the production thereof,* in any State". [Italics ours].[2]

STATEMENT

This action was instituted by petitioner as a class action under Rule 23(a) of the Federal Rules of Civil Procedure in the District Court of the United States for the District of Hawaii, pursuant to §24 of the Judicial

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[1] The italicized words were substituted by the Fair Labor Standards Amendments of 1949 (63 Stat. 910, effective January 25, 1950) for the words "from" and "to", respectively.

[2] Prior to the Fair Labor Standards Amendments of 1949, the italicized language read "process or occupation necessary to the production thereof".

Code as amended, 28 U. S. C. §1337 (formerly §41(8)) and §274d of the Judicial Code, 28 U. S. C. §2201 (formerly §400) (R. 3-4, 410-411). The defendants were certain named employees of petitioner; Local 145-7 of the International Longshoremen's and Warehousemen's Union, which is the collective bargaining representative of such employees and of all other employees of petitioner engaged in performing similar work; and Jack Hall, Regional Director of the International Union (R. 3-4). The complaint prayed for a declaration of the rights of the parties in a controversy relating to the judicial construction of §§3(b), 3(f), 3(j), 7(a), 7(c) and 13(a)(6) of the Fair Labor Standards Act of 1938 (R. 4-9, 63-64, 119-120). The meaning and scope of these provisions have been the subject of a serious dispute for many years between the Hawaiian sugar plantations, including petitioner, and their employees.[3]

The undisputed facts are set forth in a Stipulation (R. 129-256). Briefly summarized, these facts are:

Petitioner operates a sugar plantation[4] on the Island of Oahu. Since the incorporation of petitioner in 1898, it has been engaged almost exclusively in the growing, cultivating and harvesting of sugar cane on land owned or leased by it (R. 131, 411-412), and the processing of such sugar cane into raw sugar and molasses on the plantation where produced (R. 65, 130, 131, 138-139, 256). The petitioner processes no cane except that grown by itself on its plantation (R. 184), nor does it engage in any sugar refining operations (R. 132). Substantially all of

[3] This is shown by allegations of the Complaint (R. 4-7, 119-120) which are admitted by the respondents (R. 121) and also by the Stipulation of facts of the parties (R. 137). See also R. 126-129, 277, 285, 402.

[4] The parties have stipulated that the term "plantation" means the geographical area on which petitioner produces sugar cane, processes it into raw sugar, and conducts related operations (R. 65, 130, 256).

the land (9,663 acres) now devoted to sugar cane production has been owned or leased and used by petitioner for this purpose since 1910 (R. 133, 411).

Field operations, including hauling on plantation. On its plantation petitioner prepares and plows the fields for the planting of sugar cane; plants sugar cane; "ratoons" the fields[5]; cultivates sugar cane; applies fertilizer to cane fields; irrigates cane fields by a network of irrigation ditches and water storage reservoirs; harvests sugar cane; maintains a net work of field roads (which criss-cross the cane-growing land (R. 135)) for the transportation by truck of labor, field supplies, and equipment throughout the plantation; and transports sugar cane by a narrow-gauge railroad (which also criss-crosses the cane-growing land (R. 135)) from the fields where grown to the mill. These operations are more fully described in the Stipulation (R. 139-166, 195, 197-198, 200-201, 227, 232, 233, 237, 242, 243, 244, 246, 247, 250. See also R. 358-363, 412).

The narrow gauge railroad referred to has been owned and operated by petitioner since its organization in 1898. It is located and operated exclusively on the plantation. It hauls no cane or freight for anyone other than the petitioner (R. 158-159). Cars used on this narrow-gauge railroad carry an average load of 4 and ¾ tons per car gross cane (R. 157). The Stipulation describes in detail the operation of this railroad and its integration with the total plantation operations (R. 154-163, 234. See also R. 361). The duties performed by the employees, including the employee respondents, in connection with such railroad operation are further explained at R. 195, 196, 197, 198, 202, 203, 229, 231, 232, 235, 242, 243, 244, 249, 251, 253, 344-345.

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[5] "Ratooning" is a term referring to the operations performed after a field is harvested to prepare the field for the growing of another crop (R. 142-143).

Mill operations. At the mill the petitioner grinds the sugar cane into raw sugar and molasses and loads bagged raw sugar and molasses for shipment to the continental United States. A more detailed description of these operations and of the duties performed by the employees, including the employee respondents, in connection with them will be found in the Stipulation (R. 166-183, 184-186, 231, 234, 236-240, 251-252. See also R. 412, 443). The loading of the bagged raw sugar and of the molasses at the plantation into the cars or trucks of independently owned and operated carriers at the site of the mill completes the operations of the petitioner and the work of its employees relative thereto (R. 131-132, 159).

Sugar cane cultivation and processing are physically and functionally integrated (R. 133, 167). The cane growing land of the petitioner, its buildings and yard area, and other lands owned or leased by the petitioner, but unsuited for cane growing, including a wooded area from which fire wood is cut for use as fuel by the petitioner's employees living in the plantation houses hereinafter described, all form a contiguous and compact area (R. 65, 134, 256).

All the lands devoted to the growing of sugar cane are managed and operated by the petitioner as an integrated farming unit and single enterprise, with identical cropping, cultivation and harvesting practices, and with the same labor and equipment. Employees work in the fields moving from one area to another depending upon the program of plowing, planting, irrigating, fertilizing, applying herbicides and insecticides, weeding and harvesting. The cane lands are in various stages of production or preparation. The growing, harvesting and processing of the cane and the marketing of the raw sugar constitute one continuous and year-round operation, except that annually, harvesting and processing of cane are suspended for approximately 3 months for the purpose of reconditioning the mill and equipment (R. 135-136, 210, 413).

Irrigation and water supply. An extensive and comprehensive system of water supply from surface and artesian sources has been developed on the plantation for sugar cane production and cane processing operations. See R. 145, 146, 150, 170, 195, 196, 197, 198, 201, 202, 203, 206, 226, 228-229, 242, 243, 244-245, 248, 249, 252, 341-343.

Steam and electric power is generated and power equipment and facilities are operated and maintained as an integral part of the petitioner's production and processing of sugar cane (R. 186, 187, 188-191, 194, 201-202, 213, 214, 240-241, 248). Electric power generated by the plantation is not sufficient to supply its needs. More than a third of the power used is purchased from an independently owned and operated public utility on the island of Oahu (R. 191).

Service shops. Petitioner has equipped and maintains complete service shops for prompt minor repairs and emergency work and major overhaul of agricultural and processing machinery, equipment and facilities indispensable to its growing, harvesting and processing operations. A group of small repair shops are located in an area extending not more than 300 feet from the mill building (R. 114, 194-195, 256).

Employees attached to these service shops, including some employee respondents, perform necessary maintenance, service, repair and overhauling work on all types of agricultural equipment and implements used in the growing of sugar cane (e.g. R. 195 *et seq.* 225, 226, 227, 229, 230, 231, 232, 233, 241, 242, 243, 244, 245, 246, 247) and on the equipment and facilities used in the processing operations (e.g. R. 183-184, 195 *et seq.*, 212, 214, 232, 236, 237, 238-239, 240, 241-242, 243, 244, 245, 246, 248, 249, 250, 255).

Work schedule of employees. Production in the mill operations of petitioner is keyed basically to a six-day 48-hour week with continuous and around-the-clock operations. The weekly 24-hour shutdown period of the

mill is necessary for cleaning and repairing (R. 183, 215). Petitioner's other employees also work a six-day 48-hour week (R. 79, 136-137).

Off-season activities. Because of the slight variation in climatic and weather conditions from month to month, sugar cane is grown the year-round in the Territory and can be harvested and milled any month in the year—and frequently is. For efficiency of operations and to prevent frequent shutdowns and excessive losses, sugar mills of the Territory must be closed down annually for repair and reconditioning. This shut-down period is termed the "off-season", and averages three months per year in petitioner's mill. During the off-season there is no harvesting, ratooning, cane transportation or cane processing, but all field operations other than those mentioned continue throughout the year (R. 210, 212, 213, 413).

Plantation houses. Petitioner owns 820 dwelling houses, all of which are located on the plantation (R. 221). These houses were built over a period of years by petitioner which also found it necessary to develop services and otherwise establish facilities for permanent living on the plantation to serve the needs of the required number of employees and their families (R. 219). The principal plantation community was established around the plantation buildings and yard area and came to be known as the village of Waialua (R. 65, 220, 256).

Waialua village has all the physical and visual characteristics of an established community and is similar to a typical small village or town of a farming community center. It has stores, a bank, motion picture theatres and other retail or service establishments, which are owned and operated as independent businesses (R. 220, 222-223).

The 820 dwelling houses on the plantation are occupied by 3,373 persons, of whom 2,952 are employees and pen-

sioners of the petitioner, and their families. The remaining 421 persons living in such houses are persons and their families who are not employed by the petitioner and who either work off the plantation or who own, operate or are employed by independently controlled businesses within it (R. 222).

No employee covered by the petitioner's existing collective bargaining agreement, including each and every employee respondent herein, is required as a condition of employment to live on the plantation or in plantation houses or to use any service or facility which the petitioner may be in a position to render its employees (R. 221). Some employees of petitioner live off the plantation and in houses not owned or supplied by petitioner (R. 222). The relationship which exists between the petitioner and its employees who live in plantation houses is that of landlord and tenant; employees pay cash to the petitioner for all facilities and other services furnished them (R. 220-221).

Some employee respondents render services and perform maintenance work on plantation houses and village areas (R. 221). Their services include repairing houses (R. 233); painting houses (R. 250); cleaning plantation villages (R. 254); pruning shade trees located around plantation houses and cutting fire wood for use as fuel by employees living in the plantation houses (R. 233); and painting gymnasiums and clubhouses (R. 250).

Duties of employee respondents. The questions at issue here relate only to the work and duties of the employee respondents, who are engaged on petitioner's plantation in growing, cultivating, harvesting, and processing sugar cane and in performing various operations incidental and functionally necessary and indispensable thereto (R. 279-284). Petitioner's over-all operations, however, are fully described in the Stipulation in order to make more comprehensible the specific duties performed by the employee

respondents and to show their relationship to the over-all plantation operations. The Stipulation describes in detail the work and duties of each employee respondent (R. 225-255) "now, and for a period of at least one year prior hereto" (R. 224). See also R. 351-352, 353-354.

Hours of work and compensation of employee respondents. The 48 employee respondents and all other employees of petitioner similarly situated work over 40 hours per week and do not receive overtime compensation until they have worked 48 hours in the week (R. 79-81, 136-137, 215, 381, 382, 383), except (i) one warehouse employee who is on a 40 hour workweek and receives time and one-half for hours over 40 (R. 137, 253, 378, 381, 382); (ii) one transportation employee who works on a 48 hour workweek (R. 79-81) but in certain few workweeks receives overtime compensation after 40 hours (R. 378-379, 381, 382-383); and (iii) the employees in the mill and allied service shops who, while they work a 48 hour workweek throughout the year (R. 215), receive time and one-half for hours over 40 only during a three months off-season (R. 137, 379-380, 382).

Petitioner and respondents disagree (R. 4-7, 63-64, 119-121, 125-129, 137, 255, 396-403) as to whether any of the employee respondents, including the employees in the mill and allied service shops in the off-season and the one warehouse and one transportation employee above referred to, and all other employees of petitioner similarly situated, are entitled to overtime compensation for hours worked over 40 in a week pursuant to the provisions of §7(a) of the Act. There is no controversy regarding the application of the minimum wage provisions of the Act to such employees, since petitioner's lowest paid employee receives an hourly rate in excess of that required by the Act (R. 255). The hourly wage rates of petitioner's rank and file employees range from 80 cents to $1.38 (R. 136).

Opinions below. The District Court held that all the employee respondents and all other employees of petitioner similarly situated are engaged in commerce or the production of goods for commerce (R. 440-441). With respect to the agricultural exemption from the overtime provisions of the Act provided by §13(a)(6), the court denied its applicability except to certain specified work performed in the fields (R. 441-442). Part V of the judgment (R. 444) makes it plain that the District Court held nonexempt under §13(a)(6) the following activities performed by the employee respondents: (1) hauling by narrow gauge railroad of sugar cane from petitioner's fields to its mill;[6] (2) hauling by truck of agricultural supplies, equipment and laborers to and from the fields and hauling by truck plantation supplies and equipment from Honolulu to the plantation;[7] (3) repair and overhauling of agricultural equipment;[8] (4) shoeing of horses and mules; (5) storage and handling of plantation supplies and equipment; (6) construction and repair of irrigation and water supply facilities; (7) processing of sugar cane into raw sugar and molasses, temporary storage, loading and shipment of same and maintenance and repair of processing equipment; (8) repair and maintenance of plantation buildings and grounds and shop tools; (9) operation, maintenance and repair of plantation power equipment and facilities; (10) clerical work on plantation; and (11) construction, repair and maintenance of dwelling houses and related living facilities on the plantation.

As for the processing exemption from the overtime provisions of the Act provided by §7(c), the District Court confined said exemption to certain specified activities per-

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[6] See also R. 424-425, 426, 427 and 428.

[7] See also R. 428.

[8] The District Court held repair work on agricultural equipment to be exempt only if done in emergencies *and* in the cane fields (R. 442).

formed by the employee respondents in the petitioner's mill building and even then allowed the exemption only while cane processing operations were actually being conducted or during breakdowns with the operating staff of petitioner standing by waiting for the repairs to be completed (R. 442-444). Week-end cleaning or repairs at the mill and work at the mill during the off-season were held non-exempt under §7(c) (R. 444). Part V of the Judgment (R. 444) makes it clear that the following activities performed by the employee respondents were also held non-exempt under §7(c): (1) hauling of sugar cane from the fields to the mill,[9] (2) repair and maintenance of equipment and facilities used in the processing of sugar cane into raw sugar and molasses, bagging raw sugar and loading, storing and shipping raw sugar and molasses, where such repair and maintenance are not performed in the mill building proper and take place neither at a time when cane processing operations are actually being conducted nor during breakdowns with the operating staff of petitioner standing by waiting for the repairs to be completed, (3) repair, reconstruction, maintenance and operation of equipment and facilities used in connection with supplying water or power to the petitioner's mill for cane processing, (4) loading and shipment of raw sugar and molasses out of warehouses, bins or tanks where such sugar and molasses have previously been temporarily stored, (5) the operations incident and functionally necessary to the transportation of sugar cane from the fields to the mill and the processing of sugar cane into raw sugar, and (6) the operations connected with the plantation houses.

The District Court further held that if in any workweek an employee respondent or any other employee of petitioner similarly situated performs some work which is exempt from the overtime provisions of the Act by

[9] See also R. 425-426, 428, 430-431.

virtue of §13(a)(6) or §7(c) and other work which is not so exempt, such employee is for that workweek not exempt from the overtime provisions of the Act under either §13(a)(6) or §7(c) (R. 445).

Both parties appealed from the District Court's judgment. The Court of Appeals sustained both appeals and remanded the case to the District Court on the ground that the Judgment was a nullity because, in the court's view, it gave no mandate or command as to the individual employees named as defendants in the action and therefore did not declare their rights with the positiveness required of a judgment; and because it was deemed unsupported by sufficiently detailed and specific findings of fact (R. 468-469, 490).

SPECIFICATION OF ERRORS TO BE URGED

The United States Court of Appeals for the Ninth Circuit erred:

1. In failing to hold that each employee respondent and every employee of petitioner similarly situated is exempt from the overtime provisions of the Fair Labor Standards Act by virtue of §13(a)(6) thereof.

2. In failing to hold that each employee respondent and every employee of petitioner similarly situated, who is engaged in the hauling of sugar cane from the fields to the mill, the processing of sugar cane into raw sugar, and in their incidental and functionally necessary and indispensable operations, is also exempt from the overtime provisions of the Act by virtue of §7(c) thereof.

3. In failing to hold that each employee respondent and every employee of petitioner similarly situated, when repairing and maintaining petitioner's houses and related living facilities, furnished to petitioner's employees and others under a landlord-tenant relationship with petitioner,

is not "engaged in [interstate] commerce or in the production of goods for [interstate] commerce"; and that even if he is so engaged, he is exempt from the overtime provisions of the Act by virtue of §§13(a)(6) or 7(c).

4. In holding that the judgment of the District Court is a nullity for the stated reason that it fails to declare the rights of the parties with sufficient positiveness and gives no command or mandate as to the employee respondents.

5. In holding that the judgment of the District Court is a nullity for the stated reason that it is unsupported by sufficiently detailed and specific findings of fact.

REASONS FOR GRANTING THE WRIT

I

1. The decision of the Court of Appeals presents an aggregate of important questions which have not been, but should be, decided by this Court.

This is the first case to come before this Court which presents for decision almost every phase of the agricultural and agricultural processing exemptions in the Fair Labor Standards Act. The case, therefore, is of vital importance not only to the parties but virtually to all American agriculture. As stated by the American Farm Bureau Federation, *amicus curiae* below, the activities engaged in by petitioner are functionally the same as those engaged in by almost all other farmers in the United States, and consequently the decision herein will affect almost all such farmers and their employees. The Administrator of the Wage and Hour and Public Contracts Divisions, United States Department of Labor (hereinafter called the Administrator) likewise emphasized as *amicus* below that the case presents a question of general public interest and importance in guiding his enforcement of the Act.

2. The meaning of the agricultural and agricultural processing exemptions in the Act has long been the subject of a controversy between petitioner and its employees and their union representative. The sugar industry is the most important segment of the economy of the Hawaiian Islands. Bulletin 926, U. S. Dept. of Labor, 1947, p. 31. The activities performed by petitioner on its plantation are typical of those conducted by Hawaiian sugar plantations generally. Cf. Bulletin 926, *supra,* pp. 40-50 with the Stipulation herein (R. 129 *et seq.*). See also R. 275-279, 285, and respondents' exhibit No. 4, referred to at R. 390-393. Combined in this action are more than 20 types of employment situations which would otherwise have been presented to the courts in separate actions.

II

1. In failing to hold that each employee respondent and every employee of petitioner similarly situated is exempt from the overtime provisions of the Act by virtue of §13(a)(6) thereof, the court below failed to give proper effect to an applicable decision of this Court.

In *Farmers Irrigation Co.* v. *McComb,* 337 U. S. 755, this Court said that the definition of agriculture contained in §3(f) has two distinct branches. First, there is the primary meaning of "farming in all its branches", and certain specific practices such as cultivation and tillage of the soil, dairying, etc. are listed as being included in this primary meaning. Second, there is the broader meaning which includes things other than farming, such as "practices, whether or not themselves farming practices, which are performed either by a farmer or on a farm, incidentally to or in conjunction with 'such' farming operations." 337 U. S. at 762-763. While concluding that neither branch of the definition exempted employees of a mutual irrigation company supplying water for irrigation

purposes to its farmer-members,[10] the Court made it clear that the second branch of the definition embraces all practices incident to or in conjunction with farming, including irrigation, processing and other activities, when performed either by a farmer or on a farm, provided the practices are performed on commodities grown by the farmer and not on commodities produced by other farmers. 337 U. S. at 766, note 15.[11] Here, as already noted, the various operations of petitioner for which exemption is claimed are performed by petitioner only upon the sugar cane petitioner itself grows on its own farm (R. 159, 184). *Supra*, pp. 5, 6.

The decision in the *Farmers Irrigation* case, then, fully supports exemption of all employee respondents and all other employees of petitioner similarly situated under §§13(a)(6) and 3(f) of the Act.[12] In failing to so hold the Court of Appeals failed to give proper effect to an applicable decision of this Court and renders necessary review by this Court.

2. In holding that the judgment of the District Court is a nullity, the decision of the Court of Appeals is in conflict with applicable decisions of this Court and also with decisions of other Courts of Appeals.

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[10] Under the Fair Labor Standards Amendments of 1949, §13(a)(6) was amended specifically to exempt employees of a company such as the Farmers Irrigation Company. See the conference report on the 1949 Amendments, H. Rep. 1453, 81st Cong. 1st Sess., pp. 9, 28.

[11] The Court also indicated that irrigation operations performed by a farmer himself upon his own farm would come within the first branch of the definition "as being part of the process of cultivating and tilling the soil." 337 U. S. at 763. The Court of Appeals below also recognized that the *Farmers Irrigation* case "highlights the exclusion [from the Act] of the worker who deals exclusively with irrigation on the farm of this single owner as one engaged in agriculture" (R. 483).

[12] See also Jackson, J., dissenting, 337 U. S. at 771.

a. The Court of Appeals held the judgment of the District Court a nullity on the ground that it was unsupported by sufficiently detailed and specific findings of fact (R. 469 *et seq.*). This ruling is in conflict with this Court's decisions in *Tennessee Coal, Iron and Railroad Co.* v. *Muscoda,* 321 U. S. 590, *reh'g den.* 322 U. S. 771 and *Jewell Ridge Coal Corp* v. *Local No. 6167,* 325 U. S. 161, *reh'g. den.* 325 U. S. 897, as well as with the decisions of the Courts of Appeals in such cases 135 F. (2d) 320 (C. C. A. 5), *reh'g den.* 137 F. (2d) 176 (*Tennessee Coal*) and 145 F. (2d) 10 (C. C. A. 4) (*Jewell Ridge*). Both were class suits for declaratory judgment brought by employers to determine whether time spent by miners in traveling underground in mines to and from the "working face" constitutes work for which compensation must be paid under the Fair Labor Standards Act of 1938. In neither of those cases were the findings related to specific employees or to specific workweeks. See denial of petition for rehearing by the Court of Appeals for the Fifth Circuit in the *Tennessee Coal* case, 137 F. (2d) 176, 179. There were no findings as to the activities, hours of work and overtime pay of individual employees, workweek by workweek. In the *Jewell Ridge* case there were not even any individual employee defendants, but only union officials and the local and international unions. Yet the findings were not declared insufficient by this Court or by the Courts of Appeals. In a declaratory judgment action relating to the Fair Labor Standards Act, unlike an employee suit under §16(b) thereof to recover unpaid wages or overtime, there would seem no need for any such detailed findings.

The District Court herein was asked to determine the rights and liabilities of the parties both for the present and for the future without reference to any money recov-

ery by the employee respondents.[13] A declaration of such rights and liabilities, leaving to the parties its application to specific circumstances, should therefore suffice. However, the District Court in its opinion went further and made adequate findings as to the coverage and exemption status under the Act of the employees of the petitioner, depending upon the activities in which they were engaged (R. 410-437). It then crystallized its findings in a judgment (R. 440-445) which, though erroneous in petitioner's view, is completely comprehensible and easy of application to petitioner's employees and operations.

In the *Tennessee Coal* case, separate findings of fact and conclusions of law apart from the court's opinion were in fact entered by the District Court, but these also contained nothing as to the activities, hours of work and overtime pay of individual employees, workweek by workweek. Record in No. 409, October Term, 1943, pp. 556-567. And in the *Jewell Ridge* case, the District Court merely wrote an opinion without numbered findings and entered no separate findings. Record in No. 721, October Term 1944, pp. 542-576. One part of the opinion was entitled "Findings of Fact", followed by a narrative discussion of the facts. Another part of the opinion was entitled "Conclusions of Law" and was followed by a long legal discussion. Then at the end of the opinion two conclusions of law numbered 1 and 2 were set forth. The District Court's opinion herein, entitled "Findings with Conclusions" (R. 410-437), appears to be very much like the

[13] As in the *Tennessee Coal* and *Jewell Ridge* cases, claims for money recovery were set up herein by way of counterclaim (R. 402-403), on which the District Court ordered a separate trial (R. 409-410). In the *Tennessee Coal* case also, the District Court ordered trial of the counterclaim following its entry of the declaratory judgment. 40 F. Supp. 4, 11. In the *Jewell Ridge* case there was no such order since the District Court ruled adversely to the employees.

District Court's opinion rendered in the *Jewell Ridge* case except that the opinion herein was not divided between "Findings of Fact" and "Conclusions of Law".[14]

The decision in *Interstate Circuit* v. *United States,* 304 U. S. 55, among others relied upon below, is distinguishable from the instant case. In that case, there was a complete lack of findings—either separate or incorporated in the court's opinion. Here, the District Court's opinion does contain findings which, as we have shown, should have been held adequate to support the judgment. The other cases cited by the Ninth Circuit are similarly wide of the mark.

The record plainly shows, contrary to the opinion of the Court of Appeals, that the employee respondents and all other employees similarly situated do work more than 40 hours per week each week (*supra,* p. 11); that, with limited exceptions they do not receive overtime compensation until they have worked 48 hours in a week (*supra,* p. 11); and that the activities of the employee respondents are related to a particular period of time (*supra,* p. 11). Cf. *Tennessee Coal* case, 321 U. S. 590, 592 and *Jewell Ridge* case, 325 U. S. 161, 163.

The fact that certain employees in some workweeks receive overtime after 40 hours in a week does not render the question here moot with respect to such employees. The applicable collective bargaining agreement provides for the payment of such overtime after 40 hours in a

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[14] The amendment to Rule 52 of the Federal Rules of Civil Procedure, effective in 1948, provides that if an opinion is filed by the District Court it is sufficient if the findings of fact and conclusions of law appear therein. The notes of the Advisory Committee on the Rules of Civil Procedure make clear that the amendment overruled some earlier judicial decisions on this subject. See Rule 52 and notes of Advisory Committee in 28 U. S. C. A. following §723(c). The amendment to Rule 52 became effective on March 19, 1948 (see Rule 86(b) as amended and the note thereunder). The District Court's opinion below was filed April 8, 1948 (R. 437).

week only if the work performed is "subject to" the Fair Labor Standards Act (R. 79-80) and it is stipulated (R. 137) that petitioner contends, contrary to the contention of respondents, that the Fair Labor Standards Act does not require it to pay any of its employees overtime compensation. See also R. 4-7, 63-64, 119-121, 126-129, 396-403. A declaratory judgment will lie to resolve this controversy. *Altvater* v. *Freeman,* 319 U. S. 359, 365; *Sunshine Mining Co.* v. *Carver,* 34 F. Supp. 274 (D. Idaho 1940). Cf. *Walling* v. *Helmerich & Payne,* 323 U. S. 37, 43. Furthermore, what petitioner may agree to in collective bargaining has no relationship to the requirements of the Fair Labor Standards Act as found by this Court. *Bay Ridge Operating Co.* v. *Aaron,* 334 U. S. 447, 463.

b. The Court of Appeals below also held the judgment deficient on the ground that it gave no mandate or command as to the individual defendants named in the action (R. 469). Such holding likewise conflicts with this Court's decisions in the *Tennessee Coal* and *Jewell Ridge* cases, *supra,* as well as with the decisions of the Courts of Appeals in such cases.

In the *Tennessee Coal* case a judgment was entered by the District Court holding that the travel time in question was included in the compensable workweek of the underground mine employees of the plaintiff employers. 40 F. Supp. 4 (N. D. Ala.). Such judgment, with a modification not material here, was affirmed by the Court of Appeals for the Fifth Circuit, 135 F. (2d) 320 *reh'g den.* 137 F. (2d) 176, and by this Court, 321 U. S. 590. In the *Jewell Ridge* case the District Court entered a judgment to the contrary, 53 F. Supp. 935 (W. D. Va.), but on appeal such judgment was reversed by the Court of Appeals for the Fourth Circuit, 145 F. (2d) 10, and the reversal was sustained by this Court, 325 U. S. 161.

The judgments entered by the district courts in these

two cases [15] were comparable in all material respects to that in the instant case. In the *Jewell Ridge* case, as already noted, there were not even any employee defendants. The judgment was that time spent by all underground mine employees of plaintiff in underground travel was not included in the compensable workweek. In the *Tennessee Coal* case, while a few employees were named as defendants together with unions and union officials, the judgment stated that the underground travel time of all the mine employees of plaintiffs was included in their compensable workweek. More particularly, each part of the judgment rendered by the District Court herein, like those in the *Tennessee Coal* and *Jewell Ridge* cases, refers to either activities "performed by any defendant employee or by any other employee of plaintiff similarly situated" (R. 440, 441, 443, 444) or to "any defendant employee or any other employee similarly situated [who] engages in an activity" or "in activities" (R. 445); and announces rulings concerning coverage of the said employees engaging in such activities under the basic coverage provisions of the Act, or announces exemptions or non-exemptions for such employees under §§13(a)(6) or 7(c) of the Act. In some parts of the judgment the activities referred to are specifically listed (R. 441-442, 443-444, 444); in other parts they are incorporated by reference to the Complaint and Stipulation of facts. For example, Part V of the judgment (R. 444) states that all activities performed by any defendant employee or any other employee of plaintiff similarly situated, other than those listed elsewhere in the judgment as exempt, are not exempt under either §13(a)(6) or §7(c). See also R. 440.

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[15] Such judgments were not reported but can be found in the records of the cases in this Court. Record in No. 409, Oct. Term, 1943, *Tennessee Coal, Iron and Railroad Co.* v. *Muscoda*, p. 568; Record in No. 721, Oct. Term, 1944, *Jewell Ridge Coal Corp.* v. *Local* No. 6167, p. 577.

Thus, plainly the judgment herein is positive, and gives a mandate or command as to the coverage or exempt status under the Act of the individual employees named as defendants in the action, to the same if not greater degree as the judgments in the *Tennessee Coal* and *Jewell Ridge* cases gave mandates or commands as to the compensable workweek of the employees therein.

The alleged defects in the judgment listed by the court below in this case are jurisdictional and would have been raised by this Court on its own motion if they had lurked in the record in the *Tennessee Coal* and *Jewell Ridge* cases. The decision of the court below, therefore, is in conflict with applicable decisions of this Court.

III

The Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.[16]

1. The decision of the Court of Appeals expresses a fundamental hostility to declaratory judgment procedure for obtaining statutory construction (R. 484-485, 487-490)—an attitude contrary to the intent of Congress and the repeated decisions of this Court in similar circumstances. See the *Tennessee Coal* and *Jewell Ridge* cases, *supra; Perkins* v. *Elg,* 307 U. S. 325; *Order of Railway Conductors* v. *Swan,* 329 U. S. 520; *United Public Workers* v. *Mitchell,* 330 U. S. 75 and cases there cited; Rule 57 of the Federal Rules of Civil Procedure and Advisory Committee Note thereto. See also *Bowie* v. *Gonzalez,* 117 F. (2d) 11 (C. C. A. 1) (declaratory judgment action brought by a Puerto Rican sugar company against three of its employees individually and as representatives of a class to determine whether the company's employees engaged in

[16] See Frankfurter and Hart "*The Business of the Supreme Court at October Term,* 1932", 47 Harv. L. Rev. 245, 277.

transportation and milling operations were exempt under §13(a)(6) of the Act); *Sunshine Mining Co.* v. *Carver,* 34 F. Supp. 274 (D. Idaho); *Green Co.* v. *Hendricks,* 49 F. Supp. 698 (W. D. Okla); *Prescription House* v. *Anderson,* 42 F. Supp. 874 (S. D. Tex.).

2. The Court of Appeals implied that the proceeding here was not adversary in character (R. 487-490). We have already shown the contrary. *Supra* pp. 11, 20-21; see also *Bowie* v. *Claiborne,* (D. P. R. 1939) 1 Labor Cases ¶18,443 *aff'd sub nom. Bowie* v. *Gonzalez, supra.*

3. The decision of the Court of Appeals criticized the trial of this case on stipulated evidence rather than oral testimony (R. 485, 486-487, 488). This criticism is contrary to the usual encouragement given by courts to stipulations of fact, particularly where as here the issues are complex. See Rule 16 of the Federal Rules of Civil Procedure and the Advisory Committee Note to Rule 57, *supra,* p. 23.

IV

The court below further erred in the following respects:

1. The Court of Appeals erred in failing to hold each employee respondent exempt under the exemption for employees "employed in agriculture" provided by §13(a)(6) of the Act.

In order to be exempt under §13(a)(6) an employee must simply be employed in one or another of the activities or practices referred to in the statutory definition of "agriculture" contained in §3(f). *Farmers Irrigation Co.* v. *McComb,* 337 U. S. 755, 762 *et seq*; see also *Damutz* v. *Pinchbeck,* 158 F. (2d) 882, 883 (C. C. A. 2). "Employment in agriculture is probably the most far reaching" of the exemptions in the Act. *Addison* v. *Holly Hill Fruit Products,* 322 U. S. 607, 612. The court below recognized (R. 475, 476) that the agriculture exemption in the Act

must be construed broadly and liberally in order to free agriculture from the cost and other obligations imposed upon industry by the Act. See also *McComb* v. *Hunt Foods, Inc.*, 167 F. (2d) 905, 908 (C. C. A. 9).[17] Nor does a farmer forfeit his exemption under the Act merely because he himself conducts various operations, including processing, which are not exempt when conducted by an independent business. *Farmers Irrigation Co.* v. *McComb*, 337 U. S. 755, 761-762, 766-767, note 15, 768-769.

The statutory definition of "agriculture" starts with "farming in all its branches". Such phrase embraces each of the activities conducted by the employee respondents since each is but an integral part of the petitioner's operations of producing, cultivating, growing and harvesting sugar cane. Functionally, all of such activities are similar to the activities conducted by vast numbers of grain farmers, cotton farmers, fruit and vegetable farmers, etc. in various areas of the country.

The statutory definition also includes "harvesting of . . . agricultural . . . commodities". "Harvesting" is defined as "to gather in a crop" [18] or "to gather and store a crop".[19] The activities of the employee respondents

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[17] The court below also recognized that the agriculture exemption in §13(a)(6) and the processing exemption in §7(c) overlap in many significant respects (R. 475). The Administrator has also repeatedly recognized such overlapping. Cf. ¶10(b) of Interpretative Bulletin No. 14, (3 C. C. H. Labor Law Reporter, 4th ed. ¶24,488) with ¶¶15-21 thereof. See also the opinion of the Administrator's lawyers in WHM 35:754-755. This overlapping of the two exemptions is fully understandable. §13(a)(6) is an exemption from both the wage and hour provisions of the Act, while §7(c) is an exemption from the hour provisions alone. Congress intended that if a farmer processes his own crops, such processing should be exempt under §13(a)(6). On the other hand, if a person engages in the business of processing crops of others, independent of such person, as well as his own crops, such person was to enjoy only the more limited §7(c) exemption.

[18] Webster's New International Dictionary, Unabridged version, 2d ed. 1945, p. 1142.

[19] Standard Dictionary, Funk & Wagnall, 1935 ed.

of hauling perishable sugar cane from the fields to the mill on petitioner's main line track—all on the farm—are merely part of the gathering in and storing of sugar crops comparable to threshing operations with respect to wheat (R. 480-481). It is irrelevant that such hauling takes place by narrow-gauge railroad rather than by truck or some other medium (R. 479).[20] Moreover, since there must be immediate delivery of cut sugar cane from the fields to the mill so that the cane may immediately be processed into raw sugar and bagged (R. 133, 167), the harvesting operation, as suggested by the court below (R. 481), does not really end until the raw sugar is bagged. The processing by a farmer of the sugar cane he grows is and always has been a normal incident of sugar cane farming in Hawaii (R. 131, 184, 325-327; Bulletin 926, U. S. Dept. of Labor, 1947, p. 33).

The statutory definition of agriculture further includes "practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations". Petitioner is a farmer conducting the farming operations enumerated in §3(f) of producing, cultivating, growing and harvesting sugar cane. Its other operations upon such cane, including processing, are integrated and coordinated with the growing and harvesting operations. Accordingly such operations performed by the employee respondents are exempt as being "practices . . . performed by a farmer . . . as an incident to or in conjunction with such farming operations".[21] *Farmers Irrigation Co.* v. *McComb,* 337 U. S. at 766, note 15.

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[20] Paragraph 10(f) of the Administrator's Interpretative Bulletin No. 14 specifically rules such hauling exempt. See also paragraphs 5(a) and 10(c) of the Bulletin and WHM 35:754.

[21] The term "incident" is defined in Webster's Dictionary, *supra,* page 1257 as meaning "appertaining to", "directly and immediately pert. to, or involved in, something else". "Conjunction" is defined by Webster, p. 565, as "association", "occurrence together".

They are likewise exempt as "practices . . . performed . . . on a farm as an incident to or in conjunction with such farming operations" (R. 135, 411).[22] "Farm" is defined in Webster's New International Dictionary (2d ed.), Unabridged, (1945), p. 919 as

> ". . 6 . . . a piece of land held under lease for cultivation; hence, any tract of land (whether consisting of one or more parcels) devoted to agricultural purposes, generally under the management of a tenant or the owner; any parcel or group of parcels of land cultivated as a unit . . ." [23]

In the case of the Territory of Hawaii, "a farm means all land which is farmed by a producer, or group of producers, as a single farming unit, with cropping practices, work stock, equipment, labor, and management substantially separate from that of any other such unit". *Determination of a Farm, etc., for the Territory of Hawaii,* made by the Secretary of Agriculture on October 7, 1937 under the Sugar Act of 1937 (Code of Federal Regulations, Title 7, Ch. VIII, Pt. 802 §802.30 (2 F. R. 2108)). Thus in the instant case, the farm includes the growing fields, the buildings and yard area, the wooded plots, the field roads, etc. (R. 65, 135-136, 256).

"Preparation for market, delivery to storage or to market or to carriers for transportation to market" are specifically listed in the definition of "agriculture" as examples of practices exempt as incident to or in con-

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[22] See the Administrator's Interpretative Bulletin No. 14, ¶11; WHM 35:752; 3 C. C. H. Labor Law Reporter, 4th ed., ¶¶25,242.203, 25,242.21, 25,242.252, 25,242.281.

[23] In its brief *amicus* below, p. 6, the American Farm Bureau Federation stated:

> "Generally speaking the term 'farm' means a tract of land or several tracts of land or fields owned or controlled by one or more persons and devoted to the production of agricultural products as a single enterprise under common management with common equipment and labor. Many farms consist of several and sometimes many separate tracts or fields."

junction with farming operations. Since sugar cane is always processed into raw sugar, syrup or molasses before moving in commerce (R. 133), clearly the processing operations performed by the employee respondents upon the sugar cane and the operation of service shops and other facilities necessary and related to such processing constitute "preparation [of sugar cane] for market." Moreover, the delivery of raw sugar to the sugar warehouse constitutes "delivery to storage" and the sugar shipping operations constitute "delivery . . . to market or to carriers for transportation to market." This clearly refers to transportation taking place after the preparation for market of the agricultural commodity has been completed, i.e. transportation to market of the prepared product. The irrigation operations, the transportation of sugar cane from the fields to the mill, the transportation of supplies and laborers to and from the fields, and the operation of service shops and other facilities functionally necessary and indispensable to the production, cultivation, growing, and harvesting of sugar cane all precede "preparation for market, delivery to storage or to market or to carriers for transportation to market," and are therefore *a fortiori* exempt, when performed by the employee respondents.[24]

The legislative history of the Act underscores the foregoing analysis. Senator Black, Chairman of the Senate Committee on Education and Labor and in charge of the bill that became the Fair Labor Standards Act, stated that bottling milk, packing apples, ginning cotton, slaughtering and preparing hogs for market and *processing of sugar cane into raw sugar or syrup*—all highly industrialized operations—were intended to be exempt if such operations were performed by a farmer upon his own pro-

[24] See the Administrator's interpretations in his Interpretative Bulletin No. 14, ¶¶10(f), 11, 12. See also *Hearings on S.* 2386 and other bills, Committee on Labor and Public Welfare, 80th Cong. 2d Sess., p. 170.

duce. 81 Cong. Rec. 7656, 7657, 7658, 7659.[25] Senator Black made such remarks in explaining a definition of agriculture narrower than that finally embodied in the Act. The exemption of operations and facilities functionally necessary and indispensable to the growing and processing of sugar cane and to the shipment of raw sugar so processed was also made specifically clear by the amendment of Senator McGill which was adopted (*id.*, p. 7888), providing that the agricultural exemption should apply not only to practices ordinarily performed *by a farmer* as an incident to his farming operations, but also to practices performed *on a farm* as an incident to such farming operations. His amendment further included in the exemption the words "delivery to market." The stated purpose of this amendment was to exempt all kinds of work done on a farm so long as it was incidental to agricultural purposes and was merely preparatory to the marketing of the field crop. The amendment was also designed to include all kinds of labor performed in connection with making delivery to market of agricultural products. *Id.*, pp. 7888, 7927, 7928.

The legislative history shows that Congress started with a very broad, comprehensive definition of agriculture, and that such definition at every stage of its consideration by one or the other of the houses of Congress, as the bill worked its way through to passage, was made more and more all-inclusive. S. Rep. 884, 75th Cong.,

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[25] The Administrator early expressed the same view. Interpretative Bulletin No. 14, ¶10(b). See also *Hearings on S.* 1349, Committee on Education and Labor, 79th Cong. 1st Sess., p. 236; *Hearings on H. R.* 2033, Committee on Education and Labor, 81st Cong. 1st Sess., pp. 79, 97. The Administrator's later contrary view with respect to the processing of sugar cane (2 C. C. H. Labor Law Service, ¶25,651.70) is entitled to no weight because it was based upon a misconstruction of *Bowie* v. *Gonzalez*, 117 F. (2d) 11 (C. C. A. 1), *infra*, p. 31, and moreover is inconsistent with the language of the exemption provision, its legislative history, the case law, and with his continued recognition of the exemption of processing of other commodities such as fruit packing and canning, canning dairy products, cotton ginning and tobacco stemming, which are equally industrialized. *Skidmore v. Swift*, 323 U. S. 134, 140; *Jewell Ridge Coal Corp.* v. *Local No.* 6167, 325 U. S. 161, 169.

1st Sess., p. 6; 81 Cong. Rec. 7648; H. Rep. 1452, 75th Cong. 1st Sess., pp. 4-5, 11; H. Rep. 2182, 75th Cong. 3d Sess., p. 2; 83 Cong. Rec. 9162-9163, 9253-9254. Without the broad definition of "agriculture" which was written into the bill, it is a reasonable conclusion from the legislative history that the bill would not have been enacted into law (83 Cong. Rec. 7393, 9257).

No distinction was drawn by Congress between "large" or "small" farms or between "hand labor" or "mechanized" farms. Cf. *NLRB* v. *Campbell*, 159 F. (2d) 184, 187 (C. C. A. 5). Petitioner's field operations are no less mechanized than its processing or transportation operations (R. 156-157, 216), and throughout American agriculture, growing operations are commonly integrated with processing operations. See brief *amicus* below, American Farm Bureau Federation, pp. 2-3, 6-8. Congress legislated with full knowledge of the technological advances in American agriculture in the generation preceding enactment of the Act.[28] Moreover, Congress has repeatedly declined to deny exemption to so-called "mechanized" or "industrialized" agriculture, notwithstanding arguments presented on behalf of Hawaiian plantation employees by the respondent union. *Hearings on Fair Labor Standards Act Amendments of 1949*, Senate Committee on Labor and Public Welfare, 81st Cong. 1st Sess., pp. 972-977, 979-981; *Hearings on S. 2386* (among other bills), Committee on Labor and Public Welfare, 80th Cong. 2d Sess., pp. 317-334; *Hearings on S. 1349*, Com-

[28] *U. S. Census of Agriculture* (1945) pt. II, p. 65. Farms or plantations the size of petitioner's are not at all rare in the United States and its Territories and possessions; the last census of agriculture disclosed more than 7100 farms with 10,000 acres or more. *Id.* See also Supp. Rep. 1012, pt. 2, House Committee on Education and Labor, 79th Cong., 1st Sess., p. 77. The size and integration of Hawaiian sugar plantation operations resulted from natural factors and economic considerations. *Bulletin* 926, U. S. Dept. of Labor, 1947, p. 33. Such operations have resulted in high per-worker productivity, and largely determine the standard of living in Hawaii. *Id.* Hawaiian plantation labor is among the highest paid agricultural labor throughout the world.

mittee on Education and Labor, 79th Cong. 1st Sess., pp. 1048-1070.[27] The House Committee on Education and Labor on its part has specifically recognized (H. Rep. 267, 81st Cong. 1st Sess., p. 24) that the present Act exempts all employees in agriculture regardless of the size and industrialized character of the employer's operations. The Administrator is in accord. See note 27, *supra*, and the testimony of the Administrator and an associate at *Hearings on H. R. 2033*, 81st Cong. 1st Sess., pp. 79, 97.

This analysis of the statutory language and history is fully confirmed in the decided cases. See *Farmers Irrigation Co.* v. *McComb*, 337 U. S. at 766, note 15; *Damutz* v. *Pinchbeck*, 66 F. Supp. 667 (D. Conn.) *aff'd* 158 F. (2d) 882 (C. C. A. 2); *Miller Hatcheries* v. *Boyer*, 131 F. (2d) 283, 285 (C. C. A. 8); *Bruno* v. *Hills Bros.*, 7 Labor Cases ¶61,763 (D. P. R.); *Walling* v. *Rocklin*, 132 F. (2d) 3 (C. C. A. 8); *Walling* v. *Craig*, 53 F. Supp. 479, 483 (D. Minn.); *Walling* v. *Peacock Corp.*, 58 F. Supp. 880, 883 (E. D. Wisc.); *McComb* v. *Consolidated Fisheries*, 174 F. (2d) 74 (C. C. A. 3); and particularly three decisions of the Court of Appeals for the First Circuit all relating to the growing and processing of sugar cane in Puerto Rico, namely *Vives* v. *Serralles*, 145 F. (2d) 552, *Calaf* v. *Gonzalez*, 127 F. (2d) 934, 936 and *Bowie* v. *Gonzalez*, 117 F. (2d) 11, 18, 123 F. (2d) 387, 391-392.[28]

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[27] See also the following bills in which unsuccessful efforts were made to extend the Act to workers on large industrialized farms: H. R. 2033 (p. 31, lines 2-5), H. R. 3190, as introduced (p. 30, lines 10-13) and S. 248, (p. 13, lines 7-12), 81st Cong. 1st Sess.; S. 2062, 80th Cong. 1st Sess.; S. 2861, 77th Cong. 2d Sess. The Administrator in his Annual Reports has also repeatedly recommended a narrowing of the exemption for such workers. Annual Report 1943-1944, p. 8; *id.* 1944-1945, p. 1; *id.* 1946, pp. 52, 66-68; *id.* 1948, pp. 137-149.

[28] As this Court recognized in *Farmers Irrigation Co.* v. *McComb*, 337 U. S. at 767, note 15, the exemption was held inapplicable in *Bowie* v. *Gonzalez* because the employees there involved were transporting and processing cane grown by independent growers as well as cane grown by their employer. *Calaf* v. *Gonzalez* is in accord.

2. Assuming that §13(a)(6) does not exempt all of the employee respondents, the Court of Appeals erred in failing to hold that such employees are exempt from the overtime provisions of the Act under §7(c) when engaged in hauling sugar cane from the fields to the mill, the processing of sugar cane into raw sugar, and their incidental and functionally necessary and indispensable operations.

Petitioner and the employee respondents are engaged in just two things: (a) producing sugar cane, and (b) processing same into raw sugar and molasses. Insofar as the employee respondents are not held to be engaged in activities exempt as agricultural under §13(a)(6), they must be held engaged in processing cane into raw sugar or in activities necessary and related thereto, and hence exempt under §7(c). In testimony before both House and Senate Labor Committees, the respondent union conceded that (except during the off-season) all the Hawaiian sugar plantation workers are exempt from the overtime requirements of the Act either under §13(a)(6) or §7(c). *Hearings before Senate Labor and Public Welfare Committee* on Fair Labor Standards Act Amendments of 1949, 81st Cong., 1st Sess., p. 974; *Hearings before Senate Labor and Public Welfare Committee* on S. 2386 (among other bills), 80th Cong. 2d Sess., pp. 318-319; *Hearings before House Committee on Education and Labor* on various bills to amend the Fair Labor Standards Act of 1938, 80th Cong. 1st Sess., p. 1990.

Section 7(c) applies to a farmer who processes his own crops as much as to a processor who processes only the crops grown by others. The language, insofar as relevant, exempts, without time limit, all employees in "any place of employment" where their employer is "engaged . . . in the processing of . . . sugar cane . . . into sugar (but not refined sugar) or into sirup". When the particular exemption in §7(c), as here, refers to an entire industry, the exemption applies to all operations which

are functionally necessary and indispensable to that industry even though performed in several separate buildings. *Heaburg* v. *Independent Oil Mill, Inc.*, 46 F. Supp. 751 (W. D. Tenn.); *Abram* v. *San Joaquin Cotton Oil Co.*, 49 F. Supp. 393 (S. D. Calif.).[29]

Employees working in the service shops, or transporting sugar cane from the fields to the mill or loading and shipping raw sugar and molasses, or doing clerical work, and all the other employees under consideration now, are just as indispensable, and as much related to sugar cane processing, as employees watching gauges in the boiling house or otherwise operating the processing machinery. Employees who keep the machines in repair at the adjoining machine shop are as much engaged in processing as those who repair the machines during breakdowns at the mill with the operating staff of petitioner standing by waiting for repairs to be completed. All the repair work, wherever and whenever done, is an indispensable requisite to the continued and effective operation of the processing facilities (R. 194, *et seq.*). Also clearly engaged in processing sugar cane are the employees who operate and maintain the equipment and facilities used in connection with the production and distribution of power (R. 186-187, 189, 192, 194, 240-241) or who supply water to the mill (R. 146). Cf. the Administrator's interpretation of the exemption provided by §13(a)(15) for forestry or logging operations. 15 F. R. 482 (Jan. 28, 1950).

Furthermore, the Stipulation (R. 129-256) and particularly Exhibits A and F thereof (R. 65, 114, 256) show that the employees under consideration work in the "place of employment where he [the petitioner] is so engaged" in

[29] Cases like *Fleming* v. *Swift*, 41 F. Supp. 825 (N. D. Ill.) and *Walling* v. *Bridgeman-Russell Co.* (D. Minn.) 6 Labor Cases ¶61422 are not to the contrary. Such cases involved §7(c) exemptions limited to particular operations in an industry. See opinion letter of Administrator dated July 9, 1941 set forth with approval in *San Joaquin* case cited in text *supra*.

the processing of sugar cane, since all work on the same premises where their employer is "processing . . . sugar cane . . . into sugar". The buildings in which they work, including the mill, service shops, storage places for petitioner's supplies, and other buildings, are located in a small compact and contiguous area of the plantation (R. 138). All repair and shipping activities of petitioner take place within 300 feet of the mill building proper (R. 114, 195, 256). The term "place of employment" cannot mean simply a single building, when the operation, of practical necessity, requires more than one building, but it must embrace the entire premises on which are located all the buildings required in the "processing of . . . sugar cane . . . into sugar". Compare §12 and §13(a)(2), where Congress used the more limited term "establishment".[30]

These conclusions are confirmed by the Administrator's interpretations. Interpretative Bulletin No. 14, ¶¶14, 18, 22; WHM 35:551-554, 763, 769, 770-771, 772-773; 2 C. C. H. Labor Law Service, ¶¶24700.63, 24700.731; 3 C. C. H. Labor Law Reporter, 4th ed. ¶24106.50; Statement of Secretary of Labor at Hearings on S. 2386 and other bills, 80th Cong. 2d Sess., p. 183.[31]

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[30] The following cases, among others, also support exemption under §7(c) of the employee respondents now under consideration: *Calaf* v. *Gonzalez*, 127 F. (2d) 934, 937-938 (C. C. A. 1); *Bowie* v. *Gonzalez*, 117 F. (2d) 11, 17, 18-19 (C. C. A. 1); *Byus* v. *Traders Compress*, 59 F. Supp. 18 (W. D. Okla.); *Walling* v. *McCracken County Peach Growers*, 50 F. Supp. 900 (W. D. Ky.); *Gordon* v. *Paducah Ice Manufacturing*, 41 F. Supp. 980 (W. D. Ky.); *Shain* v. *Armour*, 50 F. Supp. 907 (W. D. Ky.); *McDaniel* v. *Clavin* (Calif. App. Ct.) 128 Pac. (2d) 821 *aff'd* 22 Calif. (2d) 61, 136 Pac. (2d) 559.

[31] The legislative history of the Act also makes it clear that the exemption for sugar cane processing in §7(c) was intended to be "absolute". See Conference Report, 83 Cong. Rec. 9254. See also 83 Cong. Rec. 9266. Efforts in the first session of the 81st Congress to eliminate or narrow the §7(c) exemption in its application to the processing of sugar cane and the processing of other agricultural commodities were unavailing. See the following bills and reports: H. R. 2033, which eliminated the §7(c) exemptions entirely; H. R.

Nor is the exemption provided in §7(c) lost when work is performed while the mill is shut down for weekend repair and cleaning, or for the annual period of repair and reconditioning. Unlike many other exemptions granted by §7(c), which are limited to fourteen workweeks in a calendar year, the exemption granted the processing of sugar cane is a year-round one without limitation. And the industry in Hawaii, which is engaged in processing sugar cane into raw sugar, operates the year-round except insofar as the operations are required to be shut for annual repairs (R. 136, 152, 210-212, 413; Bulletin 926, U. S. Dept. of Labor, 1947, p. 64). The Sec. 7(c) exemption therefore should not be limited to the period of the year when the mill is operating.

Moreover, §7(c) grants exemption to an employer with respect to his employees "in any place of employment" where the employer is engaged in processing sugar cane into sugar or syrup. The words "place of employment" are the controlling words in the exemption provision. So long as the "place of employment" is one where the employer processes sugar cane into raw sugar as the petitioner does here, the exemption applies. There is no basis for disqualifying week-end repair or off-season work, which also takes place in the prescribed "place of employment". This is fully borne out by the legislative history of §7(c). Supra, note 31. Cf. *McComb* v. *Consolidated* Fisheries, 75 F. Supp. 798 (D. Del. 1948) *aff'd* 174 F. (2d) 74 (C. C. A. 3).[32]

3190 as reported, p. 53, lines 3-20 and the report thereon, H. Rep. 267, pp. 24-26; H. R. 5856, as introduced, p. 14, line 25 to p. 15, line 16; and S. 653, as introduced, p. 15, lines 16-25. The Fair Labor Standards Amendments of 1949 left §7(c) unchanged insofar as relevant here.

[32] In any workweek in which an employee performs work exempt under §§13(a)(6) or 7(c), he is exempt from the overtime provisions of the Act, notwithstanding he may in the same workweek engage for an insubstantial part of his time in an activity not deemed

3. The Court of Appeals erred in failing to hold that the employee respondents, when repairing and maintaining petitioner's dwelling houses and related living facilities (described *supra*, pp. 9-10), furnished to petitioner's employees and others under a landlord-tenant relationship with petitioner, are not "engaged in [interstate] commerce or in the production of goods for [interstate] commerce" and therefore the provisions of the Act do not apply to said employees;[33] but even if they are so engaged, they are exempt from the overtime provisions of the Act by virtue of §13(a)(6) or §7(c).[34]

While performing such work, these employees are obviously not "engaged in commerce".[35] *McLeod* v. *Threl-*

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exempt. Some tolerance of nonexempt work is necessary if there is not to be so widespread a denial of the exmptions as to substantially defeat the Congressional intention in enacting them. Administrator's Brief *amicus* below, pp. 40-41. Cf. *Morris* v. *McComb*, 332 U. S. 422, 434-435; *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 572. In the case of many other exemption provisions in the Act the Administrator has allowed a tolerance of nonexempt work ranging from 20% to 49.999%. 3 C. C. H. Labor Law Reporter, 4th ed., ¶¶23,301.01(e), 23,301.02(d), 23,301.03(d), 23,301.04(b), 23,301.05 (b), 24,105.02, 24,109.50, 24.110.01, 24,112.01, 24,112.50, 24,112.100, 24,112.150, 24,480 (par. 18) 25,260.05, and 25,260.34; 15 F. R. 483 (Jan. 28, 1950).

[33] The Administrator has stated that he is unprepared to express an opinion on this issue. 1944-45 WHManual, p. 97; Brief *amicus* below, p. 2.

[34] Many of the employee respondents perform miscellaneous activities (e. g. R. 202-203, 227, 234, 241-242, 244-245, 248, 249, 254-255). If an employee is engaged during any workweek in activities some of which are exempt under §13(a)(6) and the remainder of which are exempt under §7(c) he is exempt from overtime requirements for that week. By the same token, an employee, who in any workweek performs some work that does not constitute commerce or the production of goods for commerce and other work which is exempt under either §13(a)(6) or §7(c), is exempt from overtime requirements for that workweek. This is the view taken by the District Court herein (R. 433,445), by other courts (*Fitzgerald* v. *Kroger Grocery*, 45 F. Supp. 812 (D. Kansas 1942)), and by the Administrator (WHM 35:768 and 2 C. C. H. Labor Law Service, ¶33,083).

[35] The Fair Labor Standards Amendments of 1949 have not changed the definition of "commerce" in any respect material here. See p. 4 *supra*.

keld, 319 U. S. 491, 497; *Armour* v. *Wantock,* 323 U. S. 126, 131; *10 E. 40th Street Building, Inc.* v. *Callus,* 325 U. S. 578, 581; *Rosenberg* v. *Semeria,* 137 F. (2d) 742 (C. C. A. 9, *cert. den.* 320 U. S. 770. Nor are they engaged in the "production of goods for commerce", even apart from the amendatory language in the Amendments of 1949. *Infra,* p. 38.

In this statute Congress "plainly indicated its purpose to leave local business to the protection of the States", *Walling* v. *Jacksonville Paper Co.,* 317 U. S. 564, 570; *Higgins* v. *Carr. Bros. Co.,* 317 U. S. 572, 574,[36] and did not exhaust its constitutional power over commerce. *10 East 40th Street Bldg., Inc.* v. *Callus,* 325 U. S. 578, 579; *McLeod* v. *Threlkeld,* 319 U. S. 491, 493. Accordingly, all the cases under the Act (prior to the 1949 Amendments) involving employees doing work akin to that of the employees under consideration excluded them from coverage. *Wilson* v. *R. F. C.,* 158 F. (2d) 564 (C. C. A. 5), *cert. den.* 331 U. S. 810 and *Morris* v. *Beaumont Mfg. Co.* (W D. S. C. 1947) 12 Labor Cases ¶63,687.

Three factors in particular placed the employees in question beyond the scope of the Act, even prior to its recent amendment. *First,* they are not engaged on the site of whatever production is in process on the plantation, whether of cane or raw sugar, but rather do their work in a mill village physically separated from such production. Such remoteness from the physical production process is "a relevant factor in drawing the line". *10 E. 40th St.* v. *Callus,* 325 U. S. 578, 583. *Second,* the employees work on homes the occupancy of which is optional with the employees, including each employee respondent

[36] S. Rep. 884, Committee on Education and Labor, 75th Cong. 1st Sess., p. 5. The Hawaiian legislature has in fact imposed its own wage and hour requirements with respect to the services in question here. *Revised Laws of Hawaii,* 1935, Ch. 259-c, Title XXVI, as amended (R. 256, 383).

herein (R. 221). *Third,* the employees are employed on houses and facilities which are not themselves produced for or shipped in interstate commerce, nor are they used in or devoted to the production of goods for interstate commerce. They merely "serve the needs" of the employees, as the parties stipulated (R. 219), when their occupants are not engaged in such production at all, but are wholly separated therefrom in space and function. Such services are as remote from production for commerce as if provided off the petitioner's plantation.

The dwelling maintenance work here involved is therefore far removed from activities held "necessary to" production of goods for commerce in such cases as *Kirschbaum Co.* v. *Walling,* 316 U. S. 517 and *Borden Co.* v. *Borella,* 325 U. S. 679. The employee respondents engaged in such maintenance work are likewise further removed from production for commerce than the maintenance employees held excluded from coverage in *10 East 40th St. Bldg., Inc.* v. *Callus, et al.,* 325 U. S. 578.

That the employees in question are not engaged in the "production of goods for commerce" is further confirmed by the Fair Labor Standards Amendments of 1949 (63 Stat. 910), effective January 25, 1950. Under said Amendments of 1949, the pertinent part of the definition of "produced" in §3(j) was changed to provide that an employee should be deemed engaged in the production of goods if he was employed in "any closely related process or occupation directly essential to the production" of the goods. This language quite clearly does not embrace the employees in question.

The erroneous decision below should not remain unreviewed by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the writ prayed should be granted.

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